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September 24, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW B-204
Washington, D.C. 20554

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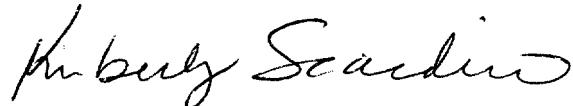
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Third Notice of Inquiry, CC Docket No. 98-146* /

Dear Ms. Salas:

Attached please find an original and four copies of WorldCom's Comments on the Commission's Third Notice of Inquiry Under Section 706. Please do not hesitate to contact me with any questions.

Sincerely,



Kimberly Scardino

Enclosure

cc: Ellen Blackler

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In the Matter of

Inquiry Concerning the Deployment of
Advanced Telecommunications Capability to
All Americans in a Reasonable and Timely
Fashion, and Possible Steps to Accelerate Such
Deployment Pursuant to Section 706 of the
Telecommunications Act of 1996

SEP 24 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 98-146

**COMMENTS OF WORLDCOM, INC.
ON THIRD NOTICE OF INQUIRY UNDER SECTION 706**

WorldCom hereby submits its comments on the Commission's Third Notice of Inquiry into whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.¹ The Commission's most recent data on subscribership to high-speed services shows that broadband deployment is on the rise, and that ADSL deployment grew by 435% in the year 2000.² Unfortunately, the report providing this data also shows what competitive providers have been arguing for some time: the Regional Bell Operating Companies ("RBOCs") have a monopoly over ADSL services.³ Not surprisingly, this data lends no support to the Bell rhetoric that there is

¹ Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146, Third Notice of Inquiry, released August 10, 2001 ("Notice").

² "Federal Communications Commission Releases Data On High-Speed Services For Internet Access," CCB/IAD Report released Aug. 9, 2001, available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/hspd0801.pdf ("FCC Data on High Speed Services").

³ The RBOCs had 86.3% of all ADSL lines in service as of December 31, 2000.

sufficient competition in the advanced services market to justify deregulation of advanced services.

There are steps that the Commission can take to ensure that advanced services are being deployed in a reasonable and timely fashion. First, in order to measure whether there is competitive choice and reasonable implementation of high-speed services in the DSL marketplace, the Commission should collect and disseminate additional data on the availability of DSL. Second, the Commission should resolve the outstanding advanced services issues that have been pending before the Commission for over a year.

I. Further Disaggregation of Data is Necessary to Show A True Picture of DSL Deployment

The Commission's statistics on DSL deployment for the year 2000 show that 92% of all ADSL lines were provided by incumbent local exchange carriers (ILECs), with the four RBOCs having over 1.7 million or 86.3% of all ADSL lines in service. This is compared to 162,225 or 5.5% of CLEC total ADSL lines. The Commission's statistics show that DSL is not being deployed in a reasonable manner. The BOCs have a monopoly on advanced services because they control the essential facility for connection to the data network: the loop.

For the past several years, competitive data providers have complained about loop provisioning and collocation delays and have attributed low volumes of CLEC subscribership to the BOCs' lack of adherence to standards. Indeed, BOC resistance to the implementation of the Commission's line sharing rules is a classic illustration of how BOC delay leads to low CLEC subscribership. In June 2000, competitive data providers were permitted to begin offering line sharing, but the Commission's statistics on

subscribership show that CLECs had only 162,225 ADSL lines in service at the end of the year and not all of those lines were line-shared lines. This is compared to 1.7 million BOC ADSL lines in service. Moreover, nearly a million of the BOC ADSL lines were provisioned during the last six months of the year when, for the first time, the BOCs faced competition from CLECs for the same service. The Commission's statistics indicate that there are other factors that contributed to the significantly lower rate of CLEC subscribership. Rather than speculate as to whether the lower rate of subscribership was caused by BOC provisioning delays, the Commission should begin collecting additional information beyond subscribership to determine whether DSL is being deployed on a reasonable basis in the United States. WorldCom suggests the following changes to the collection and reporting of high-speed lines.

A. *The Factors Impacting Subscribership Should be Separately Reported*

The Commission's use of subscribership as a benchmark for assessing high-speed deployment is beneficial in showing the number of high-speed lines in service at a particular time, but, as the Commission recognizes, subscribership reflects a combination of factors including availability of infrastructure and pricing.⁴ Because other variables impact subscribership, it is important for the Commission to collect and report information on the factors affecting subscribership.

The availability of DSL is an important issue that the Commission should consider in assessing whether advanced services are being deployed in a reasonable and timely fashion. In an effort to woo investors and market their services to end-users, the

⁴ Notice at p. 4.

RBOCs routinely boast about the reach of their DSL networks.⁵ Since the RBOCs already have information on the availability of DSL, they should begin reporting it to the Commission. Comparing the ratio of availability versus subscribership will allow the Commission to better assess whether DSL is being deployed in a reasonable fashion.

One way to report information on the availability of DSL is to collect information on the deployment of advanced services equipment by the ILECs. This can be accomplished by requiring the ILECs to report the total number of central offices and/or remote terminals in their network, and the number of those central offices and/or remote terminals where advanced services equipment has been deployed.⁶

Another factor that contributes to subscribership is the price of the DSL service. A significant increase in price could affect the number of subscribers of the service. In the past few months, there have been several reports of the RBOCs raising the price of their DSL service after competitive data providers have exited the market.⁷ Last year, when there were a handful of competitive data providers offering service, the price of consumer-grade DSL was around \$40. Today that price is about \$50. In a competitive market, it would not be necessary to collect information on price. However, the current market conditions suggest that it would be prudent for the Commission to track the BOCs

⁵ See, e.g. SBC Investor Briefing, *Strong Growth in Data, Wireless and Long Distance Highlights SBC's First-Quarter Results*, dated April 23, 2001, at p. 4 (attached hereto as Attachment A) ("At the end of this first quarter, SBC was able to reach 21.7 million customer locations, or more than 50 percent of the company's customer base with its DSL service...."); see also <http://www.sbc.com/data/network>. (SBC's Web Site reports more than 1,250 central offices are DSL equipped. In addition, SBC reports that through its Project Pronto initiative, DSL will be available to an estimated 77 million Americans by the end of 2002.)

⁶ Because competitive providers collocate their facilities in ILEC central offices, it is not necessary for CLECs to separately report this data.

⁷ See e.g. "High Speed, Higher Fees, As Competition Dwindles and Broadband Service Grows, Users Pay More," THE WASHINGTON POST, June 3, 2001, at p. H1 (Citing Verizon's May 1, 2001 25% price increase from \$39.95 to \$49.95 for DSL service.)

pricing practices to determine its impact on consumers and how price increases reflect the absence of competition in this important market.

Wholesale performance by the RBOCs is directly related to the number of CLEC subscribers. Loop provisioning delays can impact the number of end-users who subscribe to DSL. Verizon, SBC, BellSouth and Qwest all track their loop delivery performance on a monthly basis and should begin reporting it to the Commission as part of the section 706 data collection effort that has been underway for three years. It is not necessary to develop a new reporting scheme. Rather, the BOCs should take their existing loop provisioning measures and report their overall performance on a state-by-state basis in quarterly increments. The loop provisioning measures should be divided by: stand-alone xDSL loops, line sharing and line splitting.⁸ For example, Verizon's report would look something like:

UNE Loops:	Average Interval Completed, Line Sharing Y2002 Standard = 3 business days				
STATE	1Q	2Q	3Q	4Q	Total Ave. Performance
New York	x days				
Massachusetts					
Pennsylvania					

Compiling this information as part of the section 706 data collection process will assist the Commission in determining whether DSL is being deployed in a reasonable fashion. Moreover, it may explain the percentage of BOC DSL lines compared to CLEC DSL lines.

⁸ As measurements for other advanced services, such as DSL resale, are developed, the ILECs should report their performance to CLECs on those wholesale products and services as well.

B. *Data Should be Disaggregated by ISP Affiliation*

To gauge more effectively the deployment of DSL services and to assess whether there is consumer choice, the Commission should collect information on the number of subscribers of DSL service who obtain their high-speed connections from a BOC ISP affiliate compared to an unaffiliated ISP. Reviewing data on the breakdown of affiliated versus unaffiliated ISPs subscribership will assist the Commission in evaluating whether there are competitive options for DSL access available to consumers. SBC's investor materials report that over 80% of SBC's DSL subscribers obtain their DSL service from an SBC ISP affiliate.⁹ Moreover, unaffiliated ISPs argue that SBC is forcing them out of the DSL business by imposing anticompetitive terms and conditions on the service.¹⁰ Collecting and reporting data on the breakdown of BOC subscribership by affiliated versus non-affiliated ISPs will further assist the Commission in assessing whether DSL is being deployed in a reasonable fashion or exclusively within the domain of the Bell companies.

C. *Further Disaggregated of Subscribership is Necessary to Show Trends*

The Commission's data on high-speed subscribership is only minimally disaggregated and, as a result, do not reveal a true picture of the advanced services

⁹ SBC Investor Briefing, Attachment A, at p. 4 ("Because more than 80 percent of its DSL customer base obtains Internet access service directly from an SBC entity or affiliate, SBC has limited exposure to ISP financial failure.")

¹⁰ See Letter from Counsel for EarthLink to Chairman Powell, dated September 17, 2001 (attached hereto as Attachment B) (EarthLink and others request an investigation of SBC-AST's Advanced Services tariff because it contains provisions that threaten to undermine the deployment of advanced services in the United States); See also "ISPs fight for more than DSL Scraps," CNET.com, dated June 26, 2001, available at http://news.cnet.com/news/0-1004-200-6384263.html?tag=tp_pr ("According to the ISPs, SBC is asking for new rights as part of the contract. Previously, the ISPs had effectively bought access to the full data "pipe" that provided the high-speed Net service. Now, for about the same price, they're being asked to give Pacific Bell—part of the SBC network—rights to provide their customers with the new services that analysts say will become key offerings driving people to broadband: video on demand, videoconferencing, and so on.")

market. While the Commission breaks down the number of lines by “RBOC,” “Other ILEC” and “Non-ILEC,” it only provides such data for the entire year of 2000. The report does not disaggregate residential and small business high-speed lines by “RBOC,” “Other ILEC” and “Non-ILEC,” nor does it show the change in mid-year growth divided by the type of provider. Moreover, there is no data on the number of ADSL lines that the RBOCs gained in the year 2000 versus those obtained by CLECs.

II. To Accelerate the Deployment of Advanced Services, the Commission Should Enforce Existing Rules and Resolve Outstanding Competitive Issues

As the Commission recognizes in its Notice, the Commission has an obligation under section 706 of the Telecommunications Act to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans....”¹¹ If the Commission finds that advanced telecommunications capability is not being deployed in a reasonable and timely matter, it must “take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and promoting competition in the telecommunications market.”¹² While the year 2000 statistics show that broadband access is on the rise, the numbers show that ADSL services are not being deployed in a reasonable fashion—they remain the almost exclusive domain of the monopoly. The Commission can accelerate the deployment of DSL by enforcing its existing rules and resolving the outstanding advanced services issues pending before it.

¹¹ Notice at pp. 10-11 citing Section 706 (a) of the 1996 Act.

¹² Notice at p. 11 citing Section 706 (b) of the 1996 Act.

A. Enforcement of the Telecom Act is Necessary for Competition in Advanced Services Market

The Commission has established rules to ensure that the duties of Incumbent Local Exchange Carriers set forth in the Telecommunications Act of 1996 are upheld. For example, the Commission has established rules for collocation, access to UNEs and resale. Because the RBOCs lack the incentive to provide competitors with access to their local networks, the rules set forth in the Telecom Act and the competitive safeguards established by the Commission must be strictly enforced. Lack of effective enforcement undermines competition by allowing the RBOCs to escape their legal obligations. Enforcement must be swift and effective to ensure that the mandate of the Act is upheld.

B. The Commission Should Resolve the Advanced Services Issues Pending Before the Commission

A number of important issues between competitors and the BOCs have been pending before the Commission for some time—outstanding issues that have precluded competition from developing and, if left unresolved, will continue to protect the BOCs from competition into the foreseeable future. The FCC should resolve the following key issues:

- Grant the ALTS Loop Petition, filed May 17, 2000 and establish an enforceable interval for loop provisioning;¹³
- Adopt the recommendations submitted by Covad, Rhythms and WorldCom on February 27, 2001 on the methods by which competitors can provide DSL service out of ILEC remote terminals by making clear

¹³ Association for Local Telecommunications Services Petition for Declaratory Ruling: Broadband Loop Provisioning, CC Docket Nos. 98-147, 96-98, 98-141, NSD-L-00-48, DA 00-891, dated May 17, 2000 (attached hereto as Attachment C).

that full NGDLC functionality, including DSLAM line cards, fall squarely within the Commission's loop unbundling rules;¹⁴

- Find that line cards are necessary for access to UNEs in NGDLC configurations, as requested by WorldCom on October 12, 2000;¹⁵ and
- Grant WorldCom's Petition for Reconsideration of the *UNE Remand Order*, dated February 17, 2000 and unbundle ILEC packet switching functionality.¹⁶

Resolution of these issues is a prerequisite for competition in the DSL market.

Acting on these outstanding issues will make clear to the ILECs that the Commission is adamant that the Telecommunications Act of 1996 will be enforced in this market. If the Commission fails to preserve the ability of competitive LECs to secure timely and reasonable access to loops, including fiber-fed loops, the Commission risks the eventual loss of an entire industry of competitive providers—a loss that regrettably has already begun at least in significant part due to BOC refusal to open this important market. All that will be left in the DSL world will be the incumbent LECs, who will have won the battle to crush competition and regain their longstanding monopolies.

ALTS Petition: Over a year ago, ALTS filed a petition asking the Commission to adopt, among other things, loop provisioning intervals. By granting the ALTS Petition and establishing national loop intervals, the Commission can protect consumers' ability to secure the widest possible range of competitive broadband services.

¹⁴ Joint Comments of Covad Communications Company, Rhythms NetConnections Inc., and WorldCom, Inc., CC Docket Nos. 98-147, 96-98 (February 27, 2001) (attached hereto as Attachment D).

¹⁵ See Comments of WorldCom, Inc., *In the Matter of Deployment of Wireline Services Offering Advanced Services Capability*, CC Docket No. 98-147, and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, dated October 12, 2000, at pp. 9-10 (relevant excerpt of comments attached hereto as Attachment E); see also Comments of Rhythms NetConnections Inc., CC Docket Nos. 98-147, 96-98, dated October 12, 2000, at pp. 18-24, 53-55 (relevant excerpt of comments attached hereto as Attachment F).

¹⁶ Petition of MCI WorldCom, Inc. for Reconsideration, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, dated February 17, 2000 at pp. 1-15 (relevant excerpt of comments attached hereto as Attachment G).

The absence of definitive loop installation intervals hampers CLECs ability to compete effectively in the DSL marketplace. Adopting a national provisioning rule will establish a clear benchmark that will give CLECs an enforceable remedy for discriminatory loop provisioning practices.

DSL Over Fiber-Fed Loops: Before the ILECs roll out retail ADSL services over fiber-fed loops and forever block competitive access to such loops, the Commission must resolve all DSL over fiber issues that are pending before the Commission in various rulemakings. Unless the Commission takes action on the outstanding rulemakings, fiber deployment by the BOCs will shut down any remaining competition in the DSL market. If CLECs are not able to access the full features, functions and capabilities of fiber fed loops to provide data services, they will be precluded from providing DSL services to any consumer served out of a remote terminal. The ILECs argue that the CLECs have the ability to offer line sharing over fiber-fed loops by installing full DSLAMs at or near ILEC remote terminals and leasing dark fiber or a sub-loops back to the central offices. After competitive carriers have spent millions of dollars and thousands of hours collocating equipment in ILEC central offices, they should not be forced to incur additional costs and delays in securing space at remote terminals simply because the ILECs have unilaterally decided to change their network configuration. Rather, competitive carriers should have unbundled access to the ILEC's remote terminal-based DSL capability.

Similarly, the Commission should find that line cards are necessary for access to UNEs in NGDLC Configurations. CLECs have argued time and again that the Commission needs to ensure that loop unbundling rules are enforced with respect to

remote terminals. Otherwise, there will be absolutely no competition in data services to customers served partially by fiber, which, today, is about 30-40% of the U.S. population.

DSLAM Unbundling: WorldCom's Petition for Reconsideration of the UNE Remand Order has been pending before the Commission since February, 2000. In its petition, WorldCom asked the Commission to: 1) reconsider its decision not to require ILECs to provide packet switching and DSLAMs except in limited circumstances; and 2) define DSL equipment, including DSLAMs, as an unbundled network element separate from packet switching. WorldCom believes that competitive access to ILEC DSLAMS will produce increased competition in the DSL marketplace.

III. Conclusion

The collection and dissemination of additional data on DSL will assist the Commission in determining whether advanced services are being deployed in a reasonable fashion or whether DSL services continue to be available only on the timetable dictated by the Bell Companies. In addition, resolution of the important advanced services issues that have been pending before the Commission for over a year is an absolute prerequisite to preserving existing DSL competition to the extent it still exists and, more importantly, encouraging meaningful competition in this market.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kimberly Scardino".

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